

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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SANTIAGO GOMEZ,

Plaintiff,

-v-

9:14-CV-0201  
(DNH/DEP)

HAROLD D. GRAHAM, Superintendent, Auburn Correctional Facility; D. MURRAY, Correctional Officer, Auburn Correctional Facility; SERGEANT HAHN, Adirondack Correctional Facility; J. WRIGHT, Correctional Officer, Adirondack Correctional Facility; BORDEN, Correctional Officer, Adirondack Correctional Facility, NEALE, Correctional Officer, Adirondack Correctional Facility, FLETCHER, Correctional Officer, Adirondack Correctional Facility;

Defendants.

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APPEARANCES:

SANTIAGO GOMEZ  
Plaintiff, *Pro Se*  
211 Cerrato Lane, Apt. 2E  
Yonkers, NY 10701

HON. ERIC T. SCHNEIDERMAN  
Attorney General for the State of New York  
Attorneys for Defendants  
The Capitol  
Albany, New York 12224

DAVID N. HURD  
United States District Judge

OF COUNSEL:

AIMEE M. PAQUETTE, ESQ.  
Ass't Attorney General

**DECISION and ORDER**

*Pro se* plaintiff Santiago Gomez brought this civil rights action pursuant to 42 U.S.C. § 1983. On July 2, 2014, he filed his second amended complaint. See ECF No. 14. On June 16, 2016, the Honorable David E. Peebles, United States Magistrate Judge, advised by Report-Recommendation that the defendants' motion for summary judgment pursuant to Federal Rule

of Civil Procedure 56 (ECF No. 80) be granted in part and denied in part. No objections to the Report-Recommendation have been filed.

Based upon a careful review of the entire file and the recommendations of the Magistrate Judge, the Report-Recommendation is accepted in whole. See 28 U.S.C. § 636(b)(1).

Therefore, it is ORDERED that:

(1) Defendants' motion for summary judgment pursuant to Federal Rule of Civil Procedure 56 (ECF No. 80) is **GRANTED in part and DENIED in part**;

(2) The following claims contained in Plaintiff's Second Amended Complaint are **DISMISSED**:

(a) Plaintiff's conditions of confinement claim regarding the conditions he experienced at Upstate Correctional Facility and Auburn Correctional Facility;

(b) Plaintiff's retaliation claims asserted against defendant Murray with respect to the allegations that Murray threatened to place a weapon on plaintiff, denied plaintiff access to the law library, and issued plaintiff a false misbehavior report;

(c) Plaintiff's retaliation and conditions of confinement claims asserted against defendant Graham;

(d) Plaintiff's conditions of confinement claims asserted against all defendants;

(e) Plaintiff's retaliation claim asserted against defendant Hahn based on allegations that he placed plaintiff on seventy-two hour investigation status in retaliation for filing a grievance;

(f) Plaintiff's retaliation claim asserted against defendant Wright based on allegations that he filed a false misbehavior report against plaintiff in retaliation for plaintiff's grievance filed against defendant Hahn;

(3) Defendants' motion for summary judgment concerning the following claims contained in the Second Amended Complaint is **DENIED** and such claims **REMAIN** for trial:

(a) Plaintiff's excessive force claim, asserted against defendants Hahn, Neale, Borden and Fletcher, regarding the incident on May 13, 2014 at Adirondack Correctional Facility;

(b) Plaintiff's retaliation claim, asserted against defendant Hahn based on allegations that he threatened plaintiff with bodily harm in retaliation for plaintiff filing a grievance against him regarding the incident on May 3, 2014 at Adirondack Correctional Facility;

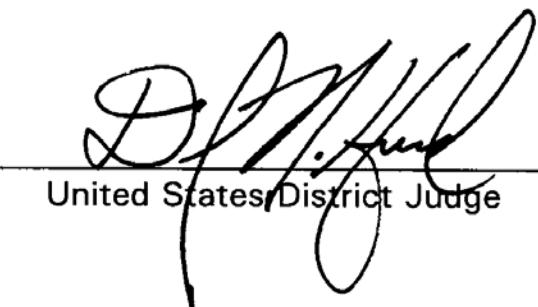
(c) Plaintiff's retaliation claim, asserted against defendants Hahn, Neale, Borden, and Fletcher based on allegations that they assaulted him in retaliation for his filing of a grievance against defendant Hahn regarding the incident on May 3, 2014 at Adirondack Correctional Facility;

(d) Plaintiff's retaliation claim, asserted against defendant Hahn based on allegations that defendant Hahn instructed defendant Wright to issue plaintiff a false misbehavior report out of retaliatory animus for plaintiff having filed a grievance against him regarding the alleged assault on May 13, 2014 at Adirondack Correctional Facility;

(4) Defendants Murray, Graham and Wright are **DISMISSED** from this action; and

(3) The Clerk serve a copy of this Decision and Order upon plaintiff in accordance with the Local Rules.

IT IS SO ORDERED.



United States District Judge

Dated: March 31, 2017  
Utica, New York